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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman

WILLIAM A. MUNDELL
Commissioner

JEFF HATCH-MILLER
Commissioner

MIKE GLEASON
Commissioner

KRISTIN K. MAYES
Commissioner

Arizona Corporation Commission

DOCKETED

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CAK

In the matter of

WSK ENERGY, LLC
23444 North 21st Way
Phoenix, Arizona 85024

KEVIN H. and JANE DOE KRAUSE
Husband and wife
23444 North 21st Way
Phoenix, Arizona 85024

Respondents.

DOCKET NO. S-03572A-04-0000

**RESPONDENTS WSK ENERGY, LLC
AND KEVIN H. KRAUSE'S ANSWER**

JURY TRIAL DEMANDED

Respondents WSK Energy, LLC ("WSK") and Kevin Krause ("Krause") (collectively "WSK") submit their Answer to the Temporary Order to Cease and Desist and Notice of Opportunity for Hearing (the "Notice"). WSK responds to the numbered paragraphs of the Notice as follows:

I. JURISDICTION.

1. WSK denies that the products at issue are securities and therefore denies that the Commission has jurisdiction.

II. RESPONDENTS.

2. WSK admits the allegations in paragraph 2.

3. WSK admits the allegations in paragraph 3.

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1 4. WSK denies each and every allegation in paragraph 4 of the Notice. Mr. Krause is
2 not married.

3 5. WSK denies each and every allegation in paragraph 5.

4 6. This requires no response.

5 **III. FACTS.**

6 7. The allegations in paragraph 7 of the Notice contain an incomplete and inaccurate
7 statement of the facts, and are therefore denied.

8 8. The allegations in paragraph 8 of the Notice contain an incomplete and inaccurate
9 statement of the facts, and are therefore denied.

10 9. The allegations in paragraph 9 of the Notice contain an incomplete and inaccurate
11 statement of the facts, and are therefore denied.

12 10. The allegations in paragraph 10 of the Notice contain an incomplete and inaccurate
13 statement of the facts, and are therefore denied.

14 11. The allegations in paragraph 11 of the Notice contain an incomplete and inaccurate
15 statement of the facts, and are therefore denied.

16 12. The allegations in paragraph 12 of the Notice contain an incomplete and inaccurate
17 statement of the facts, and are therefore denied.

18 13. The allegations in paragraph 13 of the Notice contain an incomplete and inaccurate
19 statement of the facts, and are therefore denied.

20 14. The allegations in paragraph 14 of the Notice contain an incomplete and inaccurate
21 statement of the facts, and are therefore denied.

22 15. The allegations in paragraph 15 of the Notice contain an incomplete and inaccurate
23 statement of the facts, and are therefore denied.

16. The allegations in paragraph 16 of the Notice contain an incomplete and inaccurate statement of the facts, and are therefore denied.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer and Sale of Unregistered Securities)

1. WSK denies each and every allegation in paragraph 1.
2. The product referred to in paragraph 1 immediately above was not a security, and therefore not required to be registered.
3. WSK denies each and every allegation in paragraph 3.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

4. WSK admits that it was not registered to sell securities in Arizona. WSK denies each and every other allegation in paragraph 4.
5. WSK denies each and every allegation in paragraph 5.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

6. WSK denies each and every allegation in paragraph 6.
7. WSK denies each and every allegation in paragraph 7.
8. WSK denies each and every other allegation not specifically admitted herein.

AFFIRMATIVE DEFENSES

The following affirmative defenses nullify any potential claims asserted by the Division. WSK reserves the right to amend this Answer to assert additional defenses after completion of discovery.

First Affirmative Defense

No violation of the Arizona Securities Act occurred because the program at issue is not a security.

Second Affirmative Defense

Because the program at issue is not a security, the Arizona Securities Division has no jurisdiction to bring this action and the action should be dismissed.

Third Affirmative Defense

The Notice fails to state a claim upon which relief can be granted.

Fourth Affirmative Defense

The Division has failed to plead fraud with reasonable particularity as required by Rule 9(b) of the Arizona Rules of Civil Procedure.

Fifth Affirmative Defense

The Division has improperly used the "group pleading doctrine" and failed to identify any statements or conduct attributable to Krause.

Sixth Affirmative Defense

The purchasers of the programs at issue did not rely, reasonably or otherwise, on any alleged misrepresentation or omission of WSK.

Seventh Affirmative Defense

1 WSK did not know and in the exercise of reasonable care could not have known of any
2 alleged untrue statements or material omissions as set forth in the Notice.

3 **Eighth Affirmative Defense**

4 WSK did not act with the requisite scienter.

5 **Ninth Affirmative Defense**

6 WSK did not employ a deceptive or manipulative device in connection with the purchase
7 or sale of any security.

8 **Tenth Affirmative Defense**

9 Individuals purchasing the program at issue suffered no injuries or damages as a result of
10 WSK's alleged acts.

11 **Eleventh Affirmative Defense**

12 Violations, if any, of the Arizona Securities Act were proximately caused and contributed
13 to by the improper conduct of intervening acts of other third persons who are not named in this
14 action as parties.

15 **Twelfth Affirmative Defense**

16 Purchasers of the program at issue approved and/or authorized and/or directed all of the
17 transactions at issue.

18 **Thirteenth Affirmative Defense**

19 If the program at issue was a security it was exempt from registration pursuant to A.R.S. §
20 44-1844(A)(1).

21 **Fourteenth Affirmative Defense**

BADE & BASKIN PLC
80 EAST RIO SALADO PARKWAY
SUITE 515
TEMPE, ARIZONA 85281
TELEPHONE NO 480-968-1225
FACSIMILE 480-968-6255

1 This proceeding before the Arizona Corporation Commission denies WSK essential due
2 process and is lacking in fundamental fairness. WSK's constitutional rights will be further denied
3 if it is not afforded trial by jury of this matter.

4 **Fifteenth Affirmative Defense**

5 The Division cannot meet the applicable standards for any of the relief it is seeking in the
6 Notice.

7 **Sixteenth Affirmative Defense**

8 WSK alleges such other affirmative defenses set forth in the Arizona Rules of Civil
9 Procedure 8(c) as may be determined to be applicable during discovery.
10

11
12 RESPECTFULLY SUBMITTED this 30 day of December, 2004.

13 BADE & BASKIN PLC

14
15 By 

16 Alan S. Baskin
17 80 East Rio Salado Parkway, Suite 515
18 Tempe, Arizona 85281

19 Attorneys for Respondents WSK Energy, LLC
20 and Kevin Krause
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1 ORIGINAL and thirteen copies of the foregoing
2 filed this 3rd day of December, 2004 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered
8 this 3rd day of December, 2004 to:

9 Matthew J. Neubert
10 Director of Securities
11 Securities Division
12 Arizona Corporation Commission
13 1300 W. Washington Street
14 Phoenix, AZ 85007

15 COPY of the foregoing mailed
16 this 3rd day of December, 2004 to:

17 Mark Dinell
18 Securities Division
19 Arizona Corporation Commission
20 1300 W. Washington, 3rd Floor
21 Phoenix, AZ 85007

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